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reapportions the evidential tasks involved in presenting the whole case. The substance of the controversy is unchanged. No doubt one source of confusion in this subject is the tendency to mistake for matters of substantive right certain methods of procedure which are guaranteed by the Constitution against the operation of retrospective legislation. Thus, for instance, retrospective legislation abolishing trial by jury¹¹ in criminal cases is held void under the *ex post facto* clause, because the change, it was said, "took from the accused a right that was regarded, at the time of the adoption of the Constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the crime charged against him."¹² Likewise, a similar statute diminishing the amount of proof necessary to convict can have no retroactive effect.¹³ It might erroneously be inferred from this that other rules of procedure — including those regarding the incidence of the burden of proof — are of the substance of a party's case. These decisions, however, do not rest on any distinction between substantive and procedural law, but depend merely on whether a change in procedure has undermined constitutional rights.

RECENT CASES

BANKRUPTCY — DISCHARGE — DEBTS NOT AFFECTED — DEBTS OMITTED FROM SCHEDULES — KNOWLEDGE OF PROCEEDINGS IN BANKRUPTCY. — The defendant, a bankrupt, failed to schedule a debt owed to the plaintiff. A stranger to both parties told the plaintiff that the defendant had gone into bankruptcy at a time when the former might have availed himself of the rights and privileges of other creditors. *Held*, that this knowledge is not sufficient, under § 17 *a*, of the Bankruptcy Act, to bar his claim. *Wheeler v. Newton*, 154 N. Y. Supp. 431 (Sup. Ct. App. Div.).

Under the Bankruptcy Act of 1867, the claim of a creditor was barred by the discharge of the bankrupt irrespective of the scheduling of his claim or of his receipt of notice or knowledge of the proceedings. *Platt v. Parker*, 13 N. B. R. 14; *Lamb v. Brown*, Fed. Cas., No. 8011. In the Act of 1898, the harshness of this rule was relieved by the exception of unscheduled debts from the operation of the discharge. 30 U. S. STAT. 550, § 17 *a* (3); COLLIER,

cute or defend in the manner prescribed at the time the suit is entered, without reference to when the cause of action accrued, or the character of previously existing forms of procedure, though it may turn out that present modes are less advantageous to one of the parties." *Southern Indiana Ry. Co. v. Peyton*, 157 Ind. 690, 693, 61 N. E. 722, 723.

¹¹ It is clear that the intrinsic elements of a legal controversy remain the same whether tried before a jury or before a judge, just as they remain unchanged whether the plaintiff or the defendant has the burden of proving a particular element.

¹² *State ex rel. Sherburne v. Baker*, 50 La. Ann. 1247, 24 So. 240.

"The difficulty is not so much as to the soundness of the general rule that an accused has no vested right in particular modes of procedure, as in determining whether particular statutes by their operation take from an accused any right that was regarded, at the time of the adoption of the Constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the crime charged against him." *Thompson v. Utah*, 170 U. S. 343, 352. COOLEY, TREATISE ON CONSTITUTIONAL LIMITATIONS, 6 ed., 326.

¹³ See *Duncan v. Missouri*, 152 U. S. 377, 382.

BANKRUPTCY, 3 ed., 197. Consequently, the interpretation of the section relating to the knowledge required to make the discharge operative does not depend, as the court in the principal case intimated, upon any question of the taking of property without due process of law. Courts have been liberal in their treatment of the knowledge sufficient to bar the claim. Neither need it be equivalent to the notice required by § 58 *a* of the Bankruptcy Act, nor is the source of the knowledge material, for knowledge gained through the reading of a newspaper or through conversation with the bankrupt has been held sufficient. *Morrison v. Vaughan*, 104 N. Y. Supp. 169; *Jones v. Walter*, 115 Ky. 560; *Kaufman v. Schreier*, 108 N. Y. App. Div. 298. It is well for the court to require knowledge upon which the creditor can reasonably rely. And the knowledge should be obtained in time to give the creditor opportunity to avail himself of the rights and privileges accorded to other creditors under the statute. *Birkett v. Columbia Bank*, 195 U. S. 345, 350. In the principal case the facts seem sufficient to have filled such requirements so as to bar the claim.

BURDEN OF PROOF — WHETHER A MATTER OF PROCEDURE OR SUBSTANTIVE LAW — STATUTORY SHIFT OF THE BURDEN AS TO CONTRIBUTORY NEGLIGENCE. — In a suit for the negligent killing of plaintiff's intestate, brought under the Federal Employers' Liability Act, the defendant contended that, under the Conformity Act, the state rule of procedure should be followed, thereby placing on the plaintiff the burden of proving that the intestate was not contributorily negligent. The court refused so to charge. *Held*, that the charge was properly refused. *Central Vermont Ry. v. White*, 238 U. S. 507.

In a suit for the negligent killing of the plaintiff's intestate the defendant contended that since the death of the intestate occurred before the enactment of the Code of Civil Procedure which placed the burden of proving the plaintiff's contributory negligence on the defendant, the new provision would not apply, although in force at the time of the trial. The trial court so ruled. *Held*, that the ruling was error. *Sackheim v. Piqueron*, 109 N. E. 109 (N. Y.)

See p. 95 in this issue of the REVIEW for a discussion of the principle involved in these cases.

CONFLICT OF LAWS — EXTENT OF GOVERNMENTAL POWER — LAW GOVERNING THE INTERPRETATION OF THE BY-LAWS OF A FOREIGN CORPORATION. — The plaintiff took out a policy of insurance in a Massachusetts beneficiary corporation, through a branch lodge in New York. He agreed to be bound by the by-laws as then in force or as changed. The by-laws were changed and this change upheld as valid by the Massachusetts Supreme Court. He now brings action on the policy in New York. *Held*, that the validity of the change must be governed by the Massachusetts decision. *Supreme Council of Royal Arcanum v. Green*, 35 Sup. Ct. Rep. 724.

The determination of the powers of a foreign corporation and the interpretation of its rules are controlled by the law of the domicile of the corporation. *Gaines v. Supreme Council of the Royal Arcanum*, 140 Fed. 978; *Larkin v. Knights of Columbus*, 188 Mass. 22, 73 N. E. 850; *Warner v. Delbridge Co.*, 110 Mich. 590, 68 N. W. 283. In accord with this principle, the nature and the extent of the shareholder's liability for the debts of the corporation are governed by the law of the incorporating state. *Selig v. Hamilton*, 234 U. S. 652; *Converse v. Hamilton*, 224 U. S. 243; *Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888. See 23 HARV. L. REV. 37. Again, liens may be declared on stock by valid regulations of the incorporating sovereign. *Hudson River Pulp & Paper Co. v. Warner & Co.*, 99 Fed. 187; *Warner v. Delbridge Co.*, *supra*. It has even been held that contracts made with a foreign corporation are subject to the legislation of the foreign government affecting that corporation's